IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 448 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIKUNVERBA WD/O GOHIL BHISINH UMEDSINH SINCE DECEASED
Versus
JIVRAJ PARSHOTTAM PATEL

Appearance:
MR RJ OZA for appellants.
RULE SERVED for Respondent No. 1
MR JD AJMERA for Respondent No. 2
MR PV NANAVATI for Respondent No. 3.
MR VIBHUTI NANAVATI for Respondent No. 3

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 20/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

Before effective hearing, the learned counsel Mr. Oza appearing for the appellants on instructions from his clients, seeks permission to reduce the claim from Rs. 4 lacs to Rs. 1 lac. Permission is granted. Accordingly, the claim is reduced from Rs. 4 lacs to Rs. 1 lac.

2. This is an appeal for enhancement of the amount awarded by the learned Tribunal to the claimants.

3. The deceased Gohil Bhimsinh Umedsinh met with an accident on 15.5.1980 and died on30.8.1980. He remained in the hospital from 16th to 20th May, 1980 and from 26th July, 1980 to 12th August, 1980 and died on 30.8.1980 leaving behind him, his two widows Jivkuverba and Harkuveba. They filed claim petition no. 173 of 1980 before Motor Accident Claims Tribunal, Bhavnagar, claiming in all Rs. 8 lacs by way of compensation on different heads. However, the learned Tribunal awarded in all, Rs. 88,750/- with interest at the rate of 6% per annum from the date of application till realisation together with proportionate costs thereon from all the three opponents who were held jointly and severally liable to pay the amount to them. The opponents were also ordered to bear their own costs. The amount awarded to the claimants was ordered to be shared in equal proportions by them.

4. Being aggrieved by this judgment and award passed by the learned Tribunal, the original claimants-appellants have filed this appeal in the year 1983 wherein they have restricted their claim to Rs. 4 lacs in addition to what has been awarded to them by the learned Tribunal. Today, as stated earlier, before effective hearing, the learned counsel Mr. Oza for the appellants, on instructions sought permission to reduce the claim from Rs. 4 lacs to Rs. 1 lac and the said permission was granted. Therefore, we are required to decide as to whether the claimants are entitled to additional amount of Rs. 1 lac or not.

5. From the judgment of the learned Tribunal, it appears that the learned Tribunal has considered income of Rs. 6000/- per month of the deceased from the tractor rental charges, Rs. 6000/- per year from bid land, Rs. 5000/- for seasonal fruits and Rs. 15000/- from agricultural produce. Thus, in all, he

has come to the conclusion that the yearly income of the deceased was Rs. 32000/-. Out of that, the learned Tribunal has deducted Rs. 20,000/- for his personal use, and remaining amount of Rs. 12,000/- was awarded by applying the multiplier of six years, making the total figure of Rs. 72,000/-. In addition to that, the learned Tribunal awarded Rs. 10,000/- for pain, shock and suffering of the deceased and Rs. 500/- for loss of expectancy of life and Rs. 10,750/- towards medical expenses, diet, attendant charges etc. Thus, the learned Tribunal awarded in all Rs. 88,750/- with interest at the rate of 6% per annum.

6. The learned counsel Mr. Oza for the appellants has taken us through the relevant evidence on record as well as the reasoning part of the judgment of the Tribunal. However, Mr. Oza was not in a position to assail the finding recorded by the learned Tribunal regarding the income of Rs. 6000/- per year towards tractor rental charges, Rs. 6000/- from bid land and Rs. 5000/- from seasonal food. He has vehemently submitted that the learned Tribunal has committed a grave error in considering Rs. 15000/- yearly income towards agricultural produce. He submitted that when the deceased was having 31 acres of land and that he was having a regular income out of it, then his income could not have been assessed at less than Rs. 35000/- per year. He therefore, submitted that at least on this count, additional sum of Rs. 20,000/- be awarded. However, the learned counsel Mr. Nanavati appearing for the insurance company vehemently submitted that at the most, the claimants are entitled to additional sum of Rs. 10,000/and not Rs. 20,000/- as claimed by the learned counsel Mr. Oza for the appellants. Taking into consideration, the evidence of the witnesses examined by the claimants side as well as documentary evidence in the form of Khatavahi, we are of the considered opinion that we can safely come to the conclusion that the income of the deceased from the agricultural produce was not less than Rs. 25000/- per year. Accordingly, we award Rs. 10,000/- more per year on this head of agricultural produce. It will come to Rs. 42,000/- in all. Out of that, we are prepared to deduct Rs. 16000/- per year for the personal use of the deceased instead of Rs. 20,000/as fixed by the learned Tribunal, which would come to Rs. 26,000/- per year. Applying the multiplier of six years, it would come to Rs. 1,56,000/-.

7. The learned Tribunal has awarded Rs. 10,000/- towards pain, shock and suffering, which, in our considered opinion is too less. The fact that the

deceased was required to stay in the hospital for a considerable long time on two occasions after he met with an accident, he was entitled for at least Rs. 30,000/- towards pain, shock and suffering. Therefore, we award additional sum of Rs. 20,000/- on this head of pain, shock and suffering because he received serious injuries on his legs and his legs were kept in a plaster due to the accident for about nearly three months.

8. The learned Tribunal has awarded an amount of Rs. 5000/- for loss of expectancy of life. Considering the peculiar facts and circumstances, we are of the considered opinion that Rs. 10,000/- ought to have been awarded by the Tribunal. We accordingly award additional amount of Rs. 5000/- under the head of loss of expectancy of life, which would come to Rs. 10,000/-.

9. This brings us to the amount awarded by the learned Tribunal under the head of medical expenses, attendant charges, diet etc. The learned Tribunal has awarded a meagre amount of Rs.1750/- on this head which, in our considered opinion, is too less. The fact that the deceased was required to be kept in the hospital for days together on two occasions, itself shows that the claimants must have spent considerable amount towards medical expenses, diet etc. and thus, without any hesitation, we award in all Rs. 5000/- instead of Rs. 1750/- awarded by the learned Tribunal.

10. Thus, in all the claimants are entitled to Rs. 1,84,250/-. The learned Tribunal has already awarded Rs. 88,750/-. Therefore, the claimants are entitled to additional sum of Rs. 95,500/- with interest at the rate of 6% per annum from the date of the application till realisation together with proportionate costs from all the respondents who are held jointly and severally liable to pay the said amount. The respondents are ordered to bear their own costs. The aforesaid additional amount awarded to the appellants-claimants be shared in equal proportions. The appeal is accordingly partly allowed. Award be drawn in the above terms at the earliest.

...

***darji